

US Supreme Court Justice Souter to retire

Don Knowland
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US Supreme Court Justice David H. Souter announced on Friday that he will retire after the end of the court's current term in June. Although appointed by the first President Bush in 1992, Souter tended to side more with the court's three liberal justices than with its right-wing bloc.

Souter's political patron, former New Hampshire Republican Senator Warren Rudman, had assured then-President George H.W. Bush that Souter, a Republican, would be a reliable conservative vote if appointed to the court. That turned out not to be the case.

Souter particularly angered conservative activists when he refused to vote to overrule the right to abortion first set forth in the court's landmark *Roe v. Wade* decision. He also joined the court's liberals in a minority dissenting opinion opposing the shutdown of the counting of the 2000 Florida vote which paved the way for the installation of George W. Bush as president.

Souter's distaste for the decisions of the right-wing bloc had become apparent. He reportedly was dismayed by the court's 2007 ruling that struck down the consideration of race to remedy a Kentucky school district with a history of segregation. During oral arguments last week, an indication by the court's right wing of its willingness to strike down a key provision of the 1965 Voting Rights Act requiring political jurisdictions with a history of discrimination against minority voters to obtain advance approval for changes in election procedures visibly angered Souter.

In reality, Souter had hardly moved to the left. Instead, explained Kermit Roosevelt, a University of Pennsylvania law professor and former Souter law clerk, "The Court moved right, around him, and the Republican Party moved right as well."

It is certain that the Republican right will mount a campaign to demand that President Obama replace

Souter with someone who will not challenge the dominance of the right wing on the Supreme Court and, if anything, shift the liberal wing in a more conservative direction.

There is every reason to believe, based on Obama's political history and the right-wing policies he is pursuing as president, that he will comply, despite the fact that he will likely have a supposedly "filibuster-proof" 60-vote Democratic majority in the Senate, which must vote to confirm his nominee.

On Friday, Obama assured Republicans that he would consult with them on a nominee. Edward Lazarus, a former Supreme Court law clerk, frequent writer on the court, and legal advisor to the Obama transition team, said, "I don't expect to see Obama naming some real firebrands, the kind that might be lighting rods for controversial confirmation hearings."

Obama's approach to the law, both when he headed up the nation's most prestigious law review at Harvard University and later when he taught constitutional law at the University of Chicago Law School, from 1992 to 2004, further suggest such a course. According to a *New York Times* article published on Sunday, former colleagues and students say Obama will not favor "a larger-than-life liberal to counter the conservative pyrotechnics of [right-wing] Justice Antonin Scalia, but a careful pragmatist with a limited view of the courts." Obama almost always "disappointed those who expected someone in his position" to side consistently with liberals, the *Times* added.

In a *New York Times* article published in July of last year, a former University of Chicago colleague, David Strauss, was quoted as describing Obama's skepticism for what courts can accomplish. He said that Obama's courses "chronicled the failure of liberal policies and court-led efforts at social change: the Reconstruction-era amendments that were rendered meaningless by a century of resistance, the way the triumph of Brown

gave way to fights over busing, the voting rights laws that crowded blacks into as few districts as possible.”

Souter himself, while generally opposing the right-wing bloc on civil liberties questions, has, in his less scrutinized decisions, increasingly favored, along with the other liberals on the court, the interests of big business over those of workers and consumers.

For example, Souter wrote for a 5-3 majority last year when the court sharply reduced a \$2.5 billion punitive damage award against ExxonMobil in the Exxon Valdez oil spill case. The US Chamber of Commerce expressed its gratitude in a statement issued Friday: “We will remember Justice Souter as an influential voice on the Supreme Court, for taking a balanced and thoughtful approach to the unpredictability of punitive damages, for recognizing the burdens of legal discovery on businesses, and for affirming the primacy of the federal government in foreign affairs.”

Obama’s own statement Friday indicated he would look to appoint a justice who would not seek to redress such issues as social inequality or the overwhelming influence of corporate power, but instead would take a “non-ideological” and “pragmatic” approach.

In the wake of Souter’s announcement, speculation focused on whom Obama would nominate to replace him. The names most frequently mentioned thus far are federal appellate judges Sonia Sotomayor and Diane Wood, and Obama’s solicitor general, Elena Kagan.

All three would meet an interest Obama has indicated of diversifying the court to include more women. Sotomayor’s nomination would also bring to the court its first Latino justice.

Sotomayor is a Republican originally appointed by President George H.W. Bush to the federal bench in 1991 and elevated to the appeals court in 1998 by President Bill Clinton. Conservatives have already questioned her role in upholding a decision by the city of New Haven, Connecticut to throw out a firefighter promotion test under which African-Americans failed to qualify. That decision was recently heard before the Supreme Court at oral argument.

Wood taught with Obama at Chicago Law School and worked in the Clinton Justice Department in the Antitrust Division.

Kagan also taught law with Obama at Chicago Law School and more recently was a professor and dean at Harvard Law School. She was associate counsel to

President Clinton in 1995-1996 and deputy assistant to Clinton for domestic policy and deputy director of the Domestic Policy Council from 1997 to 1999.

Clinton nominated Wood for the appellate court in 1999, but she never received a hearing from the Senate Judiciary Committee. In her confirmation hearing for solicitor general, Kagan expressed sympathy for much of the Bush administration’s expansive use of executive powers in the so-called “war on terrorism.”



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